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71-761

In the Supreme Court of the United States

OCTOBER TERM, 1971

MARGARET E. THOMPSON,

Petitioner,

vs.

BOARD OF COMMISSIONERS OF THE OAK BROOK PARK DISTRICT OF DU PAGE COUNTY, ILLINOIS,

Respondent.

Illinois Supreme Court Case No. 44330

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

Petitioner, Margaret E. Thompson, prays that a Writ of Certiorari be issued to review the judgment of the Supreme Court of Illinois entered in this cause on September 29, 1971.

OPINIONS BELOW

There is no Opinion on the final decision of the Supreme Court of Illinois in the above entitled cause on September 29, 1971.

The opinion of the Supreme Court of Illinois given at the same September term, in a related case that affects and obstructs and prejudices the above entitled case, The People ex rel. Richard B. Ogilvie v. John W. Lewis, Secretary of State, Case No. 44488, to be reported, Appendix F, infra, p. App. 13.

The opinion of the Appellate Court of Illinois, Second District, reported, ... Ill. App. 2d ....., 268 N.E.2d, 570, reprinted herein as Appendix A, infra, p. App. 1, entered on March 26, 1971. Case No. 70-137. There is no final judgment on this opinion, Appendix A, infra, p. 4.

The opinion of the Supreme Court of Illinois, unreported, entered on May 21, 1970, Case No. 43009, Appendix B, infra p. App. 5.

The opinion of the presiding judge of the trial court dated January 7, 1970, entered with report of proceedings on February 24, 1970, Appendix C, infra, p. App. 6, Case No. 69-1656 G.

The opinion of the Administrative agency, Board of Commissioners of the Oak Brook Park District is unavailable. The park board did not appear and the trial court denied me their records on January 22, 1970. Petitioner's protest denied by that opinion Appendix D, infra, p. App. 10.

JURISDICTION

As this Petition goes to the printer I have been unable to obtain copies of the final judgments of record in the courts below although I have a motion before the Illinois Supreme Court to obtain these judgments as well as a certified copy of the records, any further delay in filing this Petition is extremely detrimental to me. Letters of Notice of Judgments are used in lieu of final judgments of record.

The judgment of the Supreme Court of Illinois in the entitled cause was entered on September 29, 1971, Appendix E, infra, p. App. 11.

On October 6, 1971, Petitioner first received Notice that there was a judgment entered on the opinion of the Appellate Court on March 26, 1971 and that it was not final, Appendix A, infra, p. App. 4.

No Petition for a rehearing was filed in the Appellate Court.

On October 13, 1971, the mandate of the Supreme Court of Illinois was stayed by Justice Charles H. Davis for 60 days. Appendix G, infra, p. App. 28.

On November 24, 1971, the mandate was stayed for another 60 days. Appendix H, infra, p. App. 29.

The final judgment of the trial court dismissing the complaint, entered on January 13, 1970, through the mail without due notice to me, Appendix C, infra, p. App. 8.

The final judgment of the trial court denying the records was entered on January 22, 1970, Appendix C, infra, p. App. 9.

Direct appeal was originally taken to the Supreme Court of Illinois from the Circuit Court, final judgment of the Supreme Court of Illinois on the constitutional question, Appendix B, infra, p. App. 5.

On the Petition for Appeal as a Matter of Right denied September 29, 1971, there were two Motions, one by me to dismiss Colin Couper and his attorneys from the case and such other relief as the court deemed proper because of a bond issue, for the reason that the bonds which were in the name of the Board of Commissioners of the Oak Brook Park District could not have been sold with this litigation going on except that Couper was claiming the case was against him and not the Park Board. This was denied on May 20, 1971, the same date that all of the motion in Case No. 71-398 were denied. Appendix E, infra, p. App. 12.

A Motion to dismiss the Petition for Appeal by Couper was denied by the Illinois Supreme Court on May 26, 1971.

This appeal is taken within 90 days of the denial of the Petition for Appeal as a Matter of Right by the Illinois Supreme Court on September 29, 1971, and within 90 days of the opinion in the related case No. 44488 Ogilvie v. Lewis, Supra.

The jurisdiction of this court is invoked under 28 U.S.C. 1257 (3).

QUESTIONS PRESENTED

1. Have the Illinois courts denied to Petitioner the right to Petition for Redress of grievances, due process and equal protection of the laws by denying Judicial review under the Administrative Review Act of 1945, as amended.

2. Where each Illinois court had jurisdiction of this case at the same time it had jurisdiction of the cases in Thompson v. People ex rel. Hoffman, county collector, et al, No. 71-398 in this court, and each court had knowledge that judicial review was being denied Petitioner to the

extent that no right of remedy and justice was left, may the Illinois courts especially the Illinois Supreme Court deny all cases on the same day as that court did on May 20, 1971, without violating all of Petitioners civil rights under both state and federal constitutions.

3. Whether the construction of a statute is valid or not, if the law is being interpreted to deny Petitioner judicial review, may the Supreme Court of Illinois rule that no constitutional question is presented without denying due process of law.

4. Where Petitioner's appeal from the Appellate Court to the Supreme Court of Illinois was a matter of constitutional right if a question under either the state or federal constitutions arose for the first time, may the Supreme Court of Illinois deny such a petition without reason;

(a) where the Appellate Court renders an opinion without entering a final judgment;

(b) where the Appellate Court has had original jurisdiction to complete any case on review, given by the state constitution since January 1, 1964 and the Appellate Court rules that it can not rule on the constitutional question because it was not raised or passed on by the trial court, citing cases that were dated prior to January 1, 1964;

(c) And, where the Appellate Court referred to the Appellee as "defendant" without giving the defendant a name when there was a controversy over Colin Couper's right to have had the complaint dismissed when he was not a party to the case and the defendant-Appellee, Board of Commissioners of the Oak Brook Park District did not appear nor file a motion in the trial court;

without denying to petitioner the right to petition for redress of grievances, equal protection and due process of law and the right given to citizens under the Fourteenth Amendment to the U. S. Constitution.

5. Where procedures are provided by statutes may the administrative agency and the Illinois courts deny to petitioner her constitutional rights under both state and federal constitutions by circumventing those procedures.

6. Where the Appellate Court of Illinois rendered an opinion without a final judgment of record, that opinion is null and void as denying to petitioner the right of appeal, due process and equal protection of the laws.

7. Where the trial court ruled that the corporation was served with the summons and that Couper could not appear individually, may the trial court take the case under advisement on October 15, 1969, and then on January 7, 1970 render an opinion that the petition was made by Couper as president of the park district, when there is no president of the park district without denying equal protection of the law.

8. May the trial court judge render an opinion from his chambers through the mail on a matter that has not been presented in the court and enter a final judgment also from his chambers without giving Petitioner an opportunity to rebut his findings without denying equal protection of the law.

9. Where it is the final judgment that is appealed from and not the opinion, may the trial court enter a final judgment that has no relation to the final opinion without violating Petitioners rights under the First, Fifth and Fourteenth Amendments.

10. Where the statute provides that only the administrative agency may file a motion in the cause, does the trial court have jurisdiction to enter a final judgment on a motion by an individual, *not a party to the proceeding* as an individual but an elected member of the administrative agency, without denying equal protection and due process of law.

11. Where the law provides that a case may not be dismissed for incorrect venue did the trial court have jurisdiction to dismiss this case when that court ruled that the possible correct procedure was a tax objection without transferring the case to Petitioners tax objection cases.

12. Where the Administrative Review Act provides that the answer shall be filed within 35 days of mailing of the summons and that the case shall be heard with all possible speed, while on the contrary on a tax objection a conference need not be had for 90 days, and tax objections may not be filed until the tax bill is received, many times after the tax money has been spent by the taxing unit, it is an unreasonable denial of due process and equal protection to rule that judicial review should be had on a tax objection.

13. Where the Appellate Court has the statutory right to make administrative decisions that affect my legal rights, such as entering an opinion without a final judgment, the phrase excepting Courts, judges and magistrates from administrative review, Sec. 264, Chapt. 110, Ill. Rev. Stat. is unconstitutional as denying due process of law.

14. May the trial court rule that Petitioner who is a resident, legal voter and taxpayer of the Park District is not a member of the park district without violating her rights of citizenship as guaranteed by the Fourteenth Amendment to the United States Const.

15. May the trial court rule that any attorney may appear in any case he wants for any party he wants whether the party is named or not, without filing his papers with the clerk of the court without denying due process and equal protection of the laws.

16. Where the law provides that a motion for summary judgment must provide evidence and an affidavit of proof, in the absence of such proof or affidavit may the trial court switch the burden of proof to the Petitioner herein without hearing the complaint without denying due process and equal protection.

17. Where the statute provides that the trial court has the power to issue any order necessary to complete the record for review, and Petitioner had alleged that the administrative agency was concealing their actions and intended to condemn her property, and the administrative agency refused to appear so that they would not have to answer questions or file the records, may the trial court dismiss the complaint without reviewing those records without denying due process of law.

18. Where the statutes provide that Park Board and Park District are terms that may be used interchangeably, and all appropriation ordinances, election Notices and Bond sales are in the name of the Board of Commissioners of the Oak Brook Park District, may the trial court rule that I had to join the Oak Brook Park District without denying due process of law.

19. Where the Supreme Court of Illinois denied relief to Petitioner on May 20, 1971, on a question of selling bonds to cover a debt that appropriated money over a period of years and said money is to be used to condemn Petitioner's property, and the trial court had already ruled that the administrative agency could not accumulate money for the purchase of land, may that court while this case was still before them grant to the governor of the State in the name of the People of the State ex rel Richard B. Ogilvie, no title, on a trumped up motion for a writ of mandamus to compel the Secretary of State to advertise for bids for State bonds enter an opinion that states that the question is not only a constitutional question but a question of first presentation, when the money in the State Bonds could be granted to the Park Board to condemn Petitioner's land, without denying to Petitioner due process and equal protection of the law.

20. Where the Petitioner has had many questions before the court prior to the adoption of a new constitution, and the new constitution raises the same questions, many of which are answered in the Supreme Court of Illinois Opinion on the case of Ogilvie vs. Lewis, No. 44488, and the Secretary of State is not appealing that decision, then this court has the jurisdiction to review those questions as to Petitioner as being one of the People of the State of Illinois that the Governor had no right to represent as she was already in the same court with the same questions prior to Mr. Ogilvie who has no more rights of private citizenship in this State than Petitioner.

21. Where a public official has made a final administrative decision, whether in an individual official capacity or as a member of an official body, may that official appear

as a private citizen or an individual to circumvent answering in an official capacity, whether it is the President of the Board of Commissioners of the Park District or the Governor, without obstructing justice and interfering with due process and equal protection of the law.

22. Where all residents and taxpayers have the same legal rights does one resident or taxpayer lose his legal rights because everyone is affected the same.

23. Where the administrative review act defines an administrative decision as any decision that affects a party's legal rights duties and privileges, may the Illinois courts exclude any agencies of the state, whether executive, legislative or judicial, from judicial review under the Act without denying to the people of this State the right to Petition the government for a redress of grievances, due process and equal protection of the laws.

24. Where the Park Board is joining together with other local, State and federal governments to condemn Petitioners property for the mutual benefit of other agencies and developers, and Petitioner has protested this under the then existing constitution, when a new constitution is adopted validating such joint action and sharing, that section of the new constitution is unconstitutional under the U. S. Constitution, and the Illinois Supreme Court Opinion which validates this without examining the language in a non-controversial suit between the governor of the State and the Secretary of State is null and void, or in the alternative this court has jurisdiction to review the question or questions.

25. Where the trial court has appellate jurisdiction in judicial review, and has the power to affirm or reverse the administrative decision, a motion to dismiss is improper.

STATUTES INVOLVED

Section 264: pertinent parts:

AN ACT in relation to judicial review of decisions of administrative agencies. Approved May 8, 1945. L.1945, p. 1144.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

264. § 1. (Definitions.) For the purpose of this Act: "Administrative Agency" means a person, body of persons, group, officer, board, bureau, commission or department (other than a court, judge, or magistrate) of the State, or of any political subdivision thereof or municipal corporation therein, having power under law to make administrative decisions.

"Administrative decision" or "decision" means any decision, order or determination of any administrative agency rendered in a particular case, which affects the legal rights, duties or privileges of parties and which terminates the proceedings before the administrative agency. * * * The term "administrative decision" or "decision" does not mean or include rules, regulations, standards, or statements of policy of general application issued by an administrative agency to implement, interpret, or make specific the legislation enforced or administered by it unless such a rule, regulation, standard or statement of policy is involved in a proceeding before the agency and its applicability or validity is in issue in such proceeding, nor does it mean or include regulations concerning the internal management of the agency not affecting private rights or interests. As amended by act approved Aug. 9, 1963. L.1963, p. 2687. Effective Jan. 1, 1964.

265. § 2. **(Scope of Act.)** This Act shall apply to and govern every action to review judicially a final decision of any administrative agency where the Act creating or conferring power on such agency, by express reference, adopts the provisions of this Act. In all such cases, any other statutory, equitable or common law mode of review of decisions of administrative agencies heretofore available shall not be employed after the effective date hereof.

270. § 7. **(Appearance of defendants.)** In any action to review any final decision of any administrative agency, the agency shall appear by filing an answer consisting of a record of the proceedings had before it, or a written motion in the cause or a written appearance. All other defendants desiring to appear shall appear by filing a written appearance. Every appearance shall be filed within such time as shall be fixed by rule of the Supreme Court, and shall state with particularity an address where service of notices or papers may be made upon the defendant so appearing, or his attorney.

274. §11. **(Scope of review).** Every action to review any final administrative decision shall be heard and determined by the court with all convenient speed. The hearing and determination shall extend to all questions of law and of fact presented by the entire record before the court. No new or additional evidence in support of or in opposition to any finding, order, determination or decision of the administrative agency shall be heard by the court. The findings and conclusions of the administrative agency on questions of fact shall be held to be prima facie true and correct.

STATEMENT OF THE CASE

All of the questions in this case are intended to remove the many road blocks that have been employed to deny Petitioner herein of judicial review under the Administrative Review Act of 1945, as amended, as well as any judicial review under the Illinois Constitution.

I, Petitioner herein, appeared before the administrative agency, Board of Commissioners of the Oak Brook Park District, hereinafter called the Park Board, and protested, Appendix D, *infra*, and not recieving a satisfactory answer or obtaining relief I filed a complaint for administrative review under the Illinois Administrative Review Act of 1945, as amended seeking relief through administrative review, because the injury that I have suffered and am suffering could not be if the Park Board followed the laws as provided and granted me the right to petition for a redress of grievances, Appendix C, *infra*, p. 6.

The complaint was filed in the trial court on July 31, 1969, on Page C-2, trial court record, in the complaint appear these words:

"2. That on June 2, 1969 pursuant to above named legal Notice an appropriation ordinance was available for public inspection at the Oak Brook Village Hall, Oak Brook, Illinois. The appropriation ordinance did not disclose the size, location, cost and intended use of land sites then under consideration for acquisition. Nor did it disclose that upon information and belief some of the contemplated acquisitions of land some of which is already optioned, would make comittments requiring assessments during a number of years beyond the fiscal year April 1, 1969 to March 31, 1970 . . ."

and on page C-2 of said complaint:

"7. That on June 9, 1969 pursuant to the provisions of the constitution of the State of Illinois and Amendments 1, 5, and 14 of the Constitution of the United States of America, plaintiff filed a protest with the defendant board protesting any action on the part of defendant Board which would appropriate the sums of money in the above named ordinance for the fiscal year beginning April 1, 1969 and ending March 31, 1970 . . ."

And on Page C-3 of said Complaint appear these words: "11. That the Plaintiff is a resident and a taxpayer in the subject park district and appeared at the aforementioned hearing in person and in writing and objected to the passing of the appropriation ordinance for the fiscal year beginning April 1, 1969 and ending March 31, 1970. Upon information and belief some of protestant's property within the subject pary district was included among the land sites intended to be acquired by the corporate authorities of the subject park district, and was concealed in, the $70,000 appropriated for land acquisitions in the April 1, 1969 to March 31, 1970 appropriation ordinance and the reappropriated funds.

12. Upon information and belief some of the protestant's property within the subject park district was included among the land sites intended to be acquired by the corporate authorities of the subject park district, and was concealed in, the Master Plan adopted by the subject park district in the fiscal year ended March 31, 1969."

In the trial court the Defendant, Park Board, did not appear. Colin Couper, who was, but no longer is, President of the Board of Commissioners, appeared individually by his attorneys Ehlers Metskas & Bjorvik and Associates. Mr. Roger Bjorvik of that law firm is secretary and attorney for the Park Board.

The trial court rulings for both October 15, 1969 and January 22, 1970, are set forth in Appendix I, infra. There is no record of January 13, 1970, the date of the final entry of the trial court dismissing the complaint, and I was not notified, Appendix C, infra, p. App. 8.

The constitutional questions as presented in the Supreme Court of Illinois and the Appellate Court are reprinted in Appendix I, infra.

Judge William I. Guild took this case under advisement on October 15, 1969 after ruling in the trial court, that Couper could not file a motion individually since he was not served individually; that the park district could not accumulate tax monies for intended land acquisition; that it was necessary for me to sue the park district and not the park board; that I was not a member of the park district; that the probable proper relief was on an objection to a tax bill; that judicial review of an appropriation ordinance was not possible.

On January 7, 1970, Judge Guild gave his opinion through the mail. Appendix C, infra.

Contradicting his prior ruling, Judge Guild now states that Couper is President of the park district, which is not only false because Couper appeared individually, but because there is no president of the park district, there is a president of the Board of Commissioners elected by that Board. Nor does the judgment dismissing the complaint give Couper any title, Appendix C, infra, p. App. 8.

Section 265, the Administrative Review Act, was cited for the first time in this case in Judge Guild's letter. This is the first instance where either the court or Couper mentioned that the Act was limited to where it was adopted, Appendix C, infra.

On January 22, 1970, on my motion to incorporate the records of the park board into the proceedings pursuant to Rule 291(e), Illinois Supreme Court, to determine who Couper was representing, himself, the park board or the park district, Section 265, supra, was actually raised in the Trial Court for the first time. The Judge's letter was not in the court file.

Page 20, Trial Court Record, Report of Proceedings, Appendix I, infra.

> "Mrs. Thompson: . . . I want to appeal this decision of yours because I do not agree with you.
>
> The Court: Okay.
>
> Mrs. Thompson: I think it says if administrative review act is pinned on someone that that is the only thing you can use. It does not say you can only use it where it is adopted."

The Supreme Court of Illinois held that no constitutional question was presented, May 21, 1970, Appendix B, infra.

The Appellate court gave the opinion that the question was not raised in the trial court therefore it could not be acted upon by them, Appendix A, infra, on March 26, 1971. There is no final judgment on that opinion, Appendix A, infra, p. App. 4.

In the Supreme Court on the May 1970 ruling I contended that it was not necessary to shout "constitution, constitution" for there to be a constitutional question. That the question was embodied in my argument that the statute was not being correctly interpreted.

That even if the constitutionality of the Section had not been raised in the trial court, when the presiding judge conducted court through the mail from his chambers, he was exceeding his jurisdiction by not permitting me an op-

portunity to rebut his proposition of law, and in that case either higher court could have exercised its original jurisdiction to complete the case on review. Illinois Constitution 1870, Article VI, Sections 5 & 7.

Judge Guild's letter presents other problems in that he grants a motion, not only by a party that he had no jurisdiction to recognize, Sec. 270, supra, Ch. 110 Ill. Rev. Stat. but a motion that is based on Section 264 of the Administrative Review Act when he is claiming at the same time that the Administrative Review Act does not apply to park board decisions.

If the Administrative Review Act does not apply, the court lacks jurisdiction to grant a judgment based on that Act. Furthermore, the court has to make a statement of the proposition of law on which the judgment is based, under the administrative review act, Section 275, whereas in the reviewing court there is case law that holds that it is the judgment that is appealed and not the opinion. I did request the basis for dismissal, p. 31, trial court record, January 22, 1970, "Mam, I wrote you a letter about that." was the answer.

However it is easy to see by the arguments of Ebers, et al., that they do not consider the judgment based on the proposition of law stated in the Judge's letter, namely, that administrative review is not possible since the Park District Code does not adopt the provisions of the Act as specified in Sec. 265, supra.

All pleadings by Ebers, Metskas and Bjorvik and Associates in both the Supreme Court of Illinois and the Appellate Court were filed in the name of the Defendant-Appellee.

Both Courts are silent about the status of Colin Couper as they are about his attorneys switching to representing

the Board of Commissioners of the Oak Brook Park District. The attorneys switched after my Appellant's Brief was filed wherein I showed that the terms "Board of Commissioners" and "Park District" were defined in the Illinois Statutes as being legally interchangeable, Chap. 30, Sec. 156 (c), Ill. Rev. Stat. They could no longer prove the point that I would have to sue the Park District.

It is argued in my Petition for Appeal as a Matter of right denied by the Illinois Supreme Court on September 29, 1971, that the Appellate Court opinion is not final since there is no final judgment; that the opinion is ambiguous in not identifying who the defendant is when there is a controversy over Colin Couper's appearing individually; that the Appellate Court had original jurisdiction to answer the constitutional question; that there were two interpretations to Sec. 265, supra by the Illinois Supreme Court, one, it only applies if it is adopted, the other, it must be employed if it is adopted; that the procedures were objectionable; that the Appellate Court lacked jurisdiction to hear a revenue-related case, etc.

If the propositions of law on which the judgment is based is Section 265, supra, it is set forth in Appellant's Brief that the language of that section simply does not limit the application of administrative review, nor does the intent of the legislature seem to be to limit the use of the act since there are many statutes where an action is defined as an administrative decision where the act is not adopted but still applies.

If the final judgment is based on Section 264, supra as Ebers et al., claim, then it is not only contrary to the Administrative Review Act it is contrary to the decisions of this court as set forth in Appellant's Reply Brief, Page 6, as set forth in *Barlow* v. *Collins*, 25 L Ed 2d 192, pp. 198 &

199, and *Association of Data Processing Service* v. *William B. Camp, Comptroller of Currency,* 25 L. Ed. 2d on page 187, (11).

This case has been from the trial court to the Supreme Court of Illinois, to the Appellate Court and back to the Supreme Court of Illinois where the Petition for Appeal as a Matter of Right was denied on September 29, 1971, but not before that court made new case law under the newly effective 1970 Illinois Constitution, in a Mandamus Case, No. 44488, *The People of the State of Illinois Ex Rel Richard V. Ogilvie* v. *John W. Lewis, Secretary of State,* which affects the eventual outcome of this case should this court hold that judicial review may be had under the Administrative Review Act, or may be had on a tax objection as contained in *Ralph B. Thompson, et al.,* v. *The People Ex Rel, Elmer J. Hoffman, County Collector, et al., etc, et al.,* No. 71-398, now in this court. The opinion is in Appendix F, infra, p. App. 12.

Mr. Ogilvie petitioned individually as relator of the people in the caption, whereas the opinion states he is petitioning as Governor of the State.

The opinion validates the Bond Transportation Act, passed by the Legislature on June 28, 1971, and signed into law by the Governor on July 2, 1971, and provides money for local units of government such as the Park Board for debts created such as the debt in the appropriation ordinance complained of herein, for the condemnation of my land by the Park Board, Debts created prior to the constitution.

The opinion answers many of the questions asked in this complaint, such as may the park board create a debt that requires assessments over a period of years in an appropriation ordinance. May local units of government join to-

gether and share. Is an apropriation ordinance valid where it fails to show the exact amount of the appropriation and how the money is provided. And other questions that should this case or others that I have in this court be remanded to be heard in the trial court would make it necessary for me to come all the way back to this court to get answers to the questions.

On October 1, 1971 I requested certified copies of the records from the Appellate Court of Illinois and the Supreme Court for this appeal. On October 6, 1971, Appendix A., infra, the Appellate Court informed me that their judgment was not final. On October 13, 1971, Judge Charles Davis, of the Supreme Court of Illinois, stayed the Mandate for 60 days.

Since the judgment of the Appellate Court is not final this Petition is being directed to the Supreme Court of Illinois.

On November 24, 1971, the Supreme Court of Illinois stayed their Mandate for another 60 days, but announced that it was not necessary for them to rule on transferring the records to the Supreme Court of Illinois from the Appellate Court and make provisions for preparing the original records for transmission to this court. Appendix J, infra. I know the records are not necessary for filing this case, but I do not know what is in the judgment of the Appellate Court that is not yet final. I do not have copies of the final judgments of record of either court.

REASONS FOR GRANTING THE WRIT

The trial Court, the Appellate Court of Illinois, Second District and the Supreme Court of Illinois have acted in this case in all matters directly contrary to the decisions of this court and directly contrary to Petitioners civil rights under the federal constitution. The Illinois courts have exceeded their jurisdiction, their actions are unreasonable, arbitrary, capricious, and ambiguous making a regular appeal impossible.

I have exhausted all possibility of obtaining relief either from the administrative agency or from the courts both in this case and tax objection cases. I think I have even exhausted the courts themselves. We even tried to detach from the Park District, Appendix J, infra.

The main reason for granting this writ is to restore faith and confidence in the courts and the government. Whether it is Bobby Seale's being chained literally in the courts or my being chained figuratively, the problems of a corrupted government are not going to vanish by silencing the people.

Public corruption is defined in this case, not as evil men doing evil things, but as a device to operate the government outside legal or statutory authority. The Politics of Reform in Municipal Government in the Progressive Era, Samuel P. Hays, The American Past, Vol. II, Third Edition, Sidney Fine and Gerald S. Brown, Third Edition, The Macmillian Co., Library of Congress card No. 77-88838.

The Oak Brook Park District was formed in 1961, in an unincorporated area of Du Page County, Illinois, by the residents, including me, for the purpose of preventing

acquisition of the territory by surrounding Park Districts which under Illinois Law have unprecedented, broad police powers. Park districts not only can, but have annexed large territories without consent or knowledge of land owners or residents and they have the right of eminent domain for not only park sites but for boulevards, air ports, etc.

The present condition of the territory surrounding my property is a direct result of case law made by the Illinois Supreme Court, appeal was taken on this case to this court where the Jurisdictional Statement was dismissed in the October term, 1960. *Kotrich, et al.* v. *The County of Du Page,* 19 Ill. 2d 181, 166 N.E. 2d 601, validates Special Uses in zoning. Special Uses are special classes of uses that can be placed in any zoning district and they are potentially incompatible.

The Special use in the above case was for a private recreational club, located about one quarter mile East of me, in an area that was zoned for one and two acre residential use. The Club lies on the Eastern edge of 1000 to 1500 acres of essentially vacant land.

Since that 1960 ruling every inch of vacant land stretching from the Du Page County line on the East to the National Accelerator Laboratory on the West, has either been zoned for a special use or is in the process of being zoned for a special use, leaving my property in the center of a 100 acre hour glass island of two acre zoned land, surrounded by 1,500 acres of existing or proposed special uses that range from shopping centers, planned unit developments with twenty five story apartments to business and commercial uses, most of these special use permits having been issued since this case was filed in court.

To provide services for these special uses which are always a very dense use, at least 20,000 people on the 500

acres West of me, some local unit of government will have to be used to obtain easements through my land for streets, sewer, water etc. and in this case that unit of government is the Park Board.

Many local governments have been involved in this matter as shown by the records in Case No. 71-398, supra, in this court, with land options concealed under trust deeds, making the land values increase from Fifteen thousand to One hundred thousand dollars an acre on the land with the Special Use. However the Park Board is the agency with the money, the power and the "hatchet" and the courts have protected them.

I submit that this writ should be granted to stop the chaos that is perpetrated on the public by governments joining together and sharing so some real estate development can make a pile of money at the expense of me and others. Property is a product of commerce in this country, so rich and poor alike will have to live in high rise apartments or the zoning will have to be regulated so that rich and poor alike live on one and two acre zoning. Otherwise all you have is a monopoly on the use of land that is contrary to all our democratic principles.

In support of the above explanation and for a comprehensive study of the area, please refer to, Comprehensive Plan of Oak Brook, County of Du Page, State of Illinois, General Planning and Resources Consultants, 730 De Mun Avenue, St. Louis, Missouri 63105. On pp. 101, 102, 104 and 105 is found the connection between pathways, roads, sewers, developments and the North Eastern six counties of Illinois. On page 111 Paragraphs one and two talk of sharing. First we share with our revenue in Illinois, then I share a path with my neighbors so the utilities can go underneath. (The sanitary district cannot condemn my

land because I am not in the sanitary district, and I made the Electric and Telephone companies dig up their illegal cables on me six years ago.) Then I share a street that I pay for, then my house, my food and my husband, Where does it stop. There is a letter in the files of the Village of Oak Brook wherein the Park Board claims it is ready to develop the trailway system shown on Plate 6 in the above survey, the only thing stopping the park board from condemning our property in this case in court.

In the case cited by the Appellate Court in affirming the trial court judgment, *White* v. *Board of Appeals,* 45 Ill. 2d 378, which was tailor made by the Illinois Supreme Court on May 20, 1970, the day before that court transferred this case, App. B., infra. The Supreme Court of Illinois held that judicial review was possible on an Objection to the Tax Bill. However on May 20, 1971 when the Supreme Court of Illinois had both this case and my tax cases before them at the same time they failed to obtain for me judicial review on the tax cases. See *Ralph B. Thompson et al.* v. *People ex rel Hoffman,* 71-398 in this court for arguments on judicial review in a tax case. (This matter is still going on in the trial court. On November 22, 1971, on the alleged Application of James H. Clark, County Collector, an alleged Case No. C-71-706, I appeared in court to prevent the trial Court from entering an order distributing my tax money on the 1967, 68 and 69 taxes while the above case No. 71-398 was still pending in this Court. No application or complaint was filed by the Collector. The Clerk of the Court gave the State's Attorney a case number which was put on a final judgment order and signed by the Court. There was no case filed with the Clerk, the tax judgment books omitted taxes paid under protest. The Court did not make the Collector correct his books, but held that it lacked jurisdiction to stay the dis-

tribution of my taxes paid under protest because they were not in the tax judgment book).

I submit that judicial review is not possible on a tax objection and this point has been presented to each court in this case.

In *White* v. *Board of Appeals,* supra, on Page 381, cited in *People Ex Rel Hillison* v. *Chicago Burlington & Quincy R.R. Co.,* 22 Ill. 2d 88-92, "The act is not self executing, but applies only to those cases where it is adopted, by express reference, by the act creating or conferring jurisdiction upon the administrative agency involved." This is the interpretation of Section 265, Supra, Administrative Review Act, by the Illinois Supreme Court.

The construction given to the word "shall" by the Illinois Courts is contrary to the ruling of this court in, *Ballou* v. *Kemp,* 68 App. D.C. 7, 92 F 2d 556, 1937, "The word 'shall' in a statute will ordinarily, and where right and benefit to anyone depends upon giving it imperative construction be construed as mandatory and peremptory, and as meaning 'must', but 'shall' may be construed as 'may' where legislature intended such construction." "Shall" ought undoubtedly be construed as meaning "must" for the purpose of sustaining or enforcing an existing right, or when a public body is directed to do certain acts.", Section 265, Supra, reads, "This act shall apply . . ." wherein the Illinois courts have construed "shall" to mean "only". There is no place in the English language where "shall" may be construed to mean "only".

Petition for Leave to Appeal, Illinois Supreme Court, page 8, "In numerous other cases this court has held that said section means that it is the only method available . . . *People ex rel Builder Supply, etc.* v. *Maywood,* 22 Ill. App. 383, p. 289, 'To that end Section 2 (265, Supra)

of the act prohibits the employment of pre-existing methods of review' This is repeated in *Moline Tool Co.* v. *Dept. of Revenue*, 410 Ill. 35, 36, 37, *People* v. *Scudder Buick*, 47 Ill. 2d 383, and many many more."

On page 9, of Appellant's Brief, appear these words: "The confusion that exists seems to stem from the title of the section in question, '(Scope of Act)' which reflects that administrative review is limited, whereas the first paragraph of Section 265 of Administrative Review (Act) only defines where administrative review is required of those seeking judicial review. It is the opinion of the Plaintiff (Petitioner) that the title of Section 265, (Scope of Act), is not embraced in the act, contrary to Art: IV, Sec. 13 Ill. Const. and administrative review, the people(s) right to peacably petition for redress of grievance against the goverpment, has been relegated to the moth balls."

I submit that the proposition of law upon which the trial court and Appellate Court based their judgments is Section 265, Administrative Review Act; and pursuant to the provisions of that Act, Section 275, Powers of the Court' (3) On motion of either party the trial court shall make findings of fact or state the propositions of law upon which its judgment is based." Page 31, trial court record, Report of Proceedings:

> "Mrs. Thompson: On what basis did you dismiss it?
>
> The Court: Mam, I wrote you a letter and told you that." (Appendix C. infra)

That the interpretation or construction of the act denies me a constitutional right, renders Section 265, Chapt. 110, Ill. Rev. Stat. unconstitutional under the United States Constitution.

It is stated by the Appellate Court and argued by the Attorneys for Colin Couper that the constitutionality of Section 265, Supra was not raised or passed upon in the trial Court, this is false, page 20, trial court record, Report of Proceedings.

"Mrs. Thompson: . . . It does not say you can use it only where it is adopted." The Supreme Court of Illinois stated that no constitutional question was presented. In Appellant's Reply Brief filed in the Appellate Court, Page 1, appear these words,

"No constitutional question is presented is not self-explanatory. It could mean nothing more than Plaintiff stupidly did not word the constitutional issue in a question that the court could answer."

Section 265, Supra is completely silent about the application of Administrative Review Act where it is not adopted. I submit that this Section is now obsolete and moot. On January 1, 1964, an amendment to the Judicial Article of the Illinois Constitution of 1870 became effective, this is recorded but otherwise the same in the new 1970 Constitution effective July 1, 1971, where in Article VI, Section 9. ". . . Circuit Courts shall have such power to review administrative action as provided by law.". In 1945 when the Act was originally adopted, many forms of review of administrative action were being employed and were constitutionally possible, one of the purposes of the Act was to consolidate all forms of review so that only one action in the courts was necessary to cover all matters of fact and of law. No longer would it be necessary to take your life in your own hands if you chose the wrong action. At that time Section 265, Supra was necessary, however since January 1, 1964, it is not necessary to say that the Act must be employed if adopted, there simply is no other law or jurisdiction provided for the trial court.

Now Colin Couper has argued that it is not the opinion or reason that is appealed from but the judgment. Although the trial court had no jurisdiction to recognize a motion by Couper, Section 270, Supra, only the administrative agency could file a motion, and Couper was not the administrative agency, and the trial court judgment is in conflict with and inconsistent with the proposition of law upon which Judge Guild stated the judgment was based, in that the judgment is based on Section 264, Supra, and if Administrative Review does not apply to Park Boards, the judgment could not be based on a Section of that Act, if Couper had been the administrative agency, and the Supreme Court of Illinois had declared Section 265, Supra, mis-interpreted, there is case law to support Couper's Contention.

I submit that where the trial court must state the proposition of law upon which the judgment is based and did so state and the judgment is not based on that proposition of law that this constitutes constructive fraud on the part of the court. The judgment is null and void.

Since Section 265, Supra has nothing to do with the application of administrative review to decisions of Park Boards, the trial court judgment could have been based on Section 264. In this event, the rulings to support the arguments in Couper's Motion are contrary to the rulings of this court as stated in Appellant's Reply Brief, Page 6: "The question is not does the act granting power to Park Board adopt administrative review, but does the Act restrict access to administrative review. United States Supreme Court Case *Barlow* v. *Collins*, 25 L Ed 2d 192, pp. 198 & 199, the court ruled, "It is however, only upon a showing of clear and convincing evidence of a contrary legislative intent, that the courts should restrict access to judicial review." and again, . . . *Association of Data Pro-*

cessing Service v. *William B. Camp, Comptroller of Currency,* 25 L Ed 2d, on page 187, (11), "There is no presumption against judicial review and in favor of administrative absolutism unless such purpose is fairly discernible in the statutory scheme.".

I did all the things necessary to obtain administrative review under the Act. I appeared in writing and in person before the administrative agency, I alleged injury economic and otherwise, I alleged the Park Board was exceeding its jurisdiction, statutory non-compliance and irregularities, I alleged confiscation of my property would result. I submit that I am supported in this contention not only by *Barlow* v. *Collins,* Supra and *Data Processing,* Supra, but by *Ohio Valley Water Co.* v. *Ben Avon Borough,* 253 U.S. 287, 64 L. Ed 908, "The order here involved prescribed a complete schedule of maximum future rates and was legislative in character . . . In all such cases if the owner claims a confiscation of his property will result, the State must provide a fair opportunity for submitting that issue to a judicial tribunal for determination upon its own independent judgment as to both law and fact; otherwise the order is void because in conflict with the due process clause, Fourteenth Amendment . . ." (Reply Brief of Appellant; page 8.).

I submit that even had the administrative agency filed the Motion and appeared, which they did not, and even had the proposition of law been based on that motion, the trial court would still have been acting contrary to the decisions of this court.

It is quite clear that Administrative review was intended to replace the common law writs not to banish them and although administrative review, per se, was unknown to common law, judicial review for centuries has been had under a writ of certiorari, which is a common law writ.

I submit that the Administrative Review Act does not exclude judicial review of park board decisions either in Section 264, or Section 265, Supra, but even if it did, when the administrative agency exceeded its jurisdiction, the case could have still been sued out under the Act. *Jackson* v. *People*, 9 Mich. 111, Supreme Court of Michigan, 1860, "There are many statutes in England which, not only in large classes of summary convictions, but also for special proceedings for condemning lands, and for other purposes, take away, in express terms or by acknowledged implication, the right to certiorari which otherwise existed. In some cases an appeal lies to review the whole proceeding; in others it is subject to no further examination on the merits. In all these cases it is held, that a statute taking away the right to a certiorari does not deprive the aggrieved party of the right to sue out such a writ where the proceeding has been without jurisdiction. And the want of jurisdiction, when arising from matters not appearing in any way on the proceedings, may even be shown aliunde by affidavits".

I submit that the orders of all the Illinois Courts in this case are void as being in conflict with the right to petition for a redress of grievances in the First Amendment, the right to liberty and property, in the Fifth Amendment, and the right of Citizens, due process and equal protection in the Fourteenth Amendment, United States Constitution.

The judgment of the trial court is not based on the proposition of law as stated by that court; the judgment sustains a motion by a party who is not and can not be a party to the proceeding, Couper was not present before the administrative agency individually, he was present officially as a commissioner, and his was one of three votes cast to deny my protest; my complaint was not heard; the admin-

istrative agency defendant did not appear; Section 265, Supra, was misinterpreted; when Ch. 30, Sec. 156 (c) defines the terms "board of commissioners" and "Park District" as being equally legally acceptable and usable, the trial court had to accept either term; the judgment of the trial court sustains the motion of Colin Couper when the trial court had ruled that a motion could not be made by Couper, individually; the trial court judgment sustains a motion that sanctions the accumulation of tax monies and assessments over a period of years on an appropriation ordinance when the trial court had ruled that money could not be accumulated for land acquisition; the trial court judgment sustains a motion based on the administrative review act when the trial court had ruled that review under that act was not possible; although judicial review under the Administrative Review Act extends to all matters of law and fact, the trial court has only the power to affirm or reverse the decision of the administrative agency, they do not have jurisdiction to dismiss a complaint for administrative review; the judgment of the trial court places a public official in the position of defending his actions as a public official in the capacity of a private citizen and denies my rights to the office of private citizen; the judgments of the trial court are not based on the records of the administrative agency.

The above judgments are contrary to Ch. 110, Sections 18, 264, 265, 270, 272, 274, 275, 277 and Ch. 110A, Sections 191 (a), (b), (c), (d) and (e) plus Ch. 30, Sec. 156 (c).

The order of the Supreme Court of Illinois of May 21, 1970, denies that the construction that they have given to a section of the Administrative Review Act, 265, supra is a constitutional question when its construction is denying me judicial review, the same order of the Supreme Court grants to Ebers Metskas & Bjorvik the right to file a

Brief for the Defendant-Appellee, board of commissioners of the Oak Brook Park District, when those attorneys did not appear for the defendant in the trial court, and the defendant did not appear in the trial court either personally or by counsel; the order transfers a revenue related case which is appealable directly to that court to the Appellate Court which has no jurisdiction in revenue related cases; the order transfered the case to the Appellate Court before all briefs were filed by both parties contrary to Supreme Court Rules.

The judgment on the opinion of the Appellate Court is not yet final, Appendix A, infra, p. App. 4. I submit that an opinion without a final judgment is void. *C I R* v. *Bedford Estates*, 325 U.S. 283, 89 L Ed 1612, "A court opinion does not become a judgment, so as to set the time for seeking review to running, because in its heading it gives the date of decision and concludes with the statement that the order reviewed 'is reversed'."

Such an opinion is all I have ever seen from the Appellate Court, this is not the first time I have fought with the Appellate Court trying to obtain the final judgment of that court. Every single case included in 71-398 had the same problem. The point was argued in my Petition for Leave to Appeal in the Supreme Court of Illinois filed on May 15, 1971. If it is the final judgment that is appealed and not the opinion, then the appellate court judgment is not yet appealable; the Appellate Court opinion fails to identify who they are calling the defendant, fails to recognize that the construction of the statute quoted was raised in the trial court, and fails to recognize the original jurisdiction given to that court by the 1964 amendment to the Illinois Constitution. Whereas in a prior case, 70-80 in that court, 71-235, and 71-398 in this court they did exercise their original jurisdiction stating the cause was in-

sufficient, when the cause was not heard and when under administrative review, Section 277, the civil practices act does not apply except in Sections 182, 183 and 184, as set forth in Supreme Court Rule 291. Those sections only control the time for filing pleadings; the other sections of the civil practices Act, Ch. 110, Ill. Rev. Stat. do not apply to administrative Review, Except Sec. 264 to Sec. 279, which is the Administrative Review Act.

Petition for Appeal as a Matter of Right was taken to the Illinois Supreme Court on May 15, 1971, on the grounds that the above constitutional questions arose for the first time in the Appellate Court. My Petition was a guaranteed constitutional right and a guaranteed statutory right under Illinois Supreme Court Rule 317. I submit that the Petition could not be denied with out substantial reason and the reason would need to be put forth in writing.

While ruling that no constitutional question was presented in my case, the Supreme Court of Illinois considered the case of the *People Ex Rel, Richard B. Ogilvie* v. *John W. Lewis, Secretary of State,* No. 44488, Appendix F, infra, wherein many of the same questions asked in my complaint, and ruled upon by the trial court in my favor, on October 15, 1969, and presented in my Petition on pages 11 to 13, which was denied by the Illinois Court at the same September 1971 session, not only considering the questions of Mr. Ogilvie as constitutional questions but as questions of first presentation. The Court ignored the fact that I had included the same questions in all my pleadings and in a motion that the Illinois Court had denied on May 20, 1971.

In the caption of this case Mr. Ogilvie does not say that he is governor of this State. However, in the opinion the Supreme Court of Illinois claims the Petition is by the

Governor, forever making case law that will permit public elected officers to appear individually and privately to protect their actions as public officials. I submit that it does not matter whether it is Couper or Ogilvie, a Governor can not be governor and not be governor at one and the same time, nor can a commissioner be a commissioner and not be a commissioner at the same time. The office of private citizen is defiled by an elected officer of the government other than a private citizen, such as soldier, policeman or President who steps out of his public office to defend that office. The trial court ruled that I was not a member of the Park District, which in itself denies my citizenship, since this case was brought as a resident and taxpayer, we private citizens must have equal status in the court room with elected officials.

The decision of the Supreme Court of Illinois in the case of *Ogilvie* v. *Lewis*, supra, which validates a Bond Transportation Act of the Illinois legislature, which would give money to the Park Board or other agencies as named in Case No. 71-398, in this court, and which validates or sanctions what I am complaining about, is void for the reason that it is a mandamus case to compel the Secretary of State to perform a purely ministerial duty, in any such case the Secretary of State cannot ask constitutional questions. *Rosewood Corp.* v. *Fisher*, 46 Ill 2d 249, 263 N.E. 2d 833, 1970, "Supreme Court will not determine constitutionality of provisions of an act which do not affect party to cause under consideration or where party urging invalidity of such provisions is not in anyway aggrieved by their operation."

The Secretary of State refused to advertise for bids for the sale of bonds on the grounds that they were unconstitutional. The question of the standing of the Secretary of State to refuse his duty on those grounds is not men-

tioned. Nor does the Secretary as far as the opinion goes allege that he will be aggrieved in his official capacity by that unconstitutionality." A ministerial act is one which a public officer is required to perform upon a given state of facts in a prescribed manner in obedience to the mandate of legal authority and without regard to his own judgment or opinion concerning the propriety or impropriety of the act to be performed." McQuillan, Municipal Corporations Sec. 51.19, pp. 508-511 (1968)..

For example, *In re Sueng,* 150 Wash. 289, 272 P. 968 held that a birth certificate must be received and filed by the appropriate public agency:

> "It being the duty of the assistant registrar of vital statistics to receive and file the certificates of birth, mandamus was the proper remedy. Hodgeman v. Olsen, 86 Wash. 615, 150 P. 1122." (272 P. at 970.).

I submit that even though mandamus may have been proper it was improper to decide constitutional questions of such magnitude by the Secretary of State when the act he was required to do would in no way injure him in his official capacity if the Bonds turned out to be invalid, rendering the opinion of the Supreme Court of Illinois void.

On page 13 of this Petition is shown one of my questions on making an appropriation that required assessments over a period of years to cover a debt of unknown magnitude, while the Act validated by the Supreme Court of Illinois in *Ogilvie* v. *Lewis,* Supra, is an appropriation for a number years to cover an unknown debt with unknown income. The *Ogilvie* v. *Lewis* case utterly fails to go into the issue of a State or local government running on credit. I submit that this question is embodied in my question, and should this court decide that I did have a right to judicial

review under the Administrative Review Act, that I would have to come all the way back to this court again and get an answer since the Illinois Supreme Court has already answered the question as well as sanctioning joint action of local governments and sharing.

I submit that when a state or local government makes a debt without providing a specific tax to cover that debt, that the state or local government is issuing bills of credit which is prohibited by the United States Constitution, and from which the Fourteenth Amendment protects me as a citizen.

In the above opinion the Illinois Supreme Court not only provided money for debts of local units of government that were created prior to the adoption of the 1970 Illinois constitution, which is the way in which it is related to this case, it becomes more obvious daily, in public announcements and actions, that the bond issue which is to be paid from general revenue fund is eating up the State's money intended for the poor and needy and for Public Schools.

I submit, that I agree with this court that the court cannot solve public ills, but at the same time I am thoroughly convinced that this court could give the government back to the people by establishing the right to Petition for a Redress of Grievances, and to have access to judicial review, in the State of Illinois through the Administrative Review Act, of 1945, as amended, of the actions of governmental agencies, on those Petitions for Redress.

The decisions of the Illinois Courts do violence, I submit, to my right to judicial review as established by this court in *Barlow* v. *Collins* and *Association of data processing*. It is, I also submit, representative of problems encountered daily in and by courts in cases involving complaints against the government.

CONCLUSION

For the foregoing reasons, the Petition for Certiorari should be granted.

Respectfully submitted,

MARGARET E. THOMPSON
Petitioner, pro se

APPENDIX A

Opinion of the Appellate Court

70-137

UNITED STATES OF AMERICA

State of Illinois)
Appellate Court) ss:
Second District)

At a session of the Appellate Court, begun and held at Elgin, on the 7th day of December, in the year of our Lord one thousand nine hundred and seventy, within and for the Second District of Illinois:

Present — Honorable Thomas J. Moran, Presiding Justice
Honorable Mel Abrahamson, Justice
Honorable Glenn K. Seidenfeld, Justice
Howard K. Kellett, Clerk
Joseph C. Doring, Sheriff

Be It Remembered, that afterwards, to wit: On March 26, 1971 the Opinion of the Court was filed in the Clerk's office of said Court, in the words and figures following, viz:

No. 70-137

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

MARGARET E. THOMPSON, Plaintiff-Appellant,

vs.

BOARD OF COMMISSIONERS OF THE OAK BROOK PARK DISTRICT OF DU PAGE COUNTY, ILLINOIS, Defendant-Appellee.

Appeal from the Circuit Court of the 18th Judicial Circuit, DuPage County, Illinois.

JUSTICE SEIDENFELD DELIVERED THE OPINION OF THE COURT:

Plaintiff brought an action pursuant to the Administrative Review Act (Ill. Rev. Stat. 1969, Ch. 110, Sec. 264 et seq.) seeking to review the adoption of the Park District's annual budget and appropriation ordinance. The appeal is taken from the judgment order of the trial court which sustained defendant's motion to dismiss the complaint with prejudice.

Since the Park District Code (Ill. Rev. Stat. 1969, Ch. 105) contains no language adopting the provisions of the Administrative Review Act, judicial review under that act is not available to plaintiff. *White* v. *Board of Appeals*, 45 Ill. 2d 378, 381 (1970); *Ross* v. *Chicago Land Clearance Com.*, 413 Ill. 377, 381 (1952).

Plaintiff has also sought to challenge the constitutionality of the provisions of the Administrative Review Act limiting such review to the final decisions of such adminis-

trative agencies which, by express reference, adopt the provisions of the Administrative Review Act (Ill. Rev. Stat. 1969, Ch. 110, supra, Sec. 265). This point was not raised or passed upon by the trial court and is therefore not presented to us for review.[1] *Koplin* v. *Saul Lerner Co.*, 29 Ill. 2d 451, 454 (1963); *Shilvock* v. *Retirement Board*, 375 Ill. 68, 72 (1940).

The judgment below is affirmed.

AFFIRMED.

MORAN, P. J. and ABRAHAMSON, J. concur.

UNITED STATES OF AMERICA

State of Illinois,)
Appellate Court,) ss.
Second District,)

I, Howard K. Kellett, Clerk of the Appellate Court, in and for said Second Judicial District of the State of Illinois, and the keeper of the Records and Seal thereof, do hereby certify that the foregoing is a true, full and complete copy of the Opinion of the said Appellate Court in the above entitled cause of record in my said office.

In Testimony Whereof, I have set my hand and affixed the seal of the said Appellate Court, in Elgin, in said State, this 26th day of March A.D. 1971.

/s/ Howard K. Kellett
Clerk Appellate Court,
Second Judicial District

---

[1] We note that this appeal was filed in the Supreme Court and transferred here by an order finding no constitutional question presented and no jurisdiction on direct appeal.

State of Illinois
Appellate Court Second District
Elgin
60120

Howard K. Kellett
Clerk
312-695-3750

October 6, 1971

Mrs. Margaret E. Thompson
Box 133
Hinsdale, Illinois 60521

Re: Gen. No. 70-137
Margaret E. Thompson, appellant v. Board of Commissioners of the Oak Brook Park District of DuPage County, appellee.

Dear Mrs. Thompson:

In order to accurately furnish copies of the documents you desire to assist in the preparation of your petition for a Writ of Certiorari in the Supreme Court of the United States, we request that you itemize same. Your letter of October 1, 1971 does not specifically state the documents needed.

Our records indicate that your case is still pending in the Supreme Court of Illinois and the order of this Court on the opinion filed March 26, 1971 becomes final contigent upon the decision of the Supreme Court of Illinois.

Very truly,

/s/ Howard K. Kellett,
Howard K. Kellett, Clerk

APPENDIX B

Opinion of the Supreme Court of Illinois

Office of
Clerk of the Supreme Court
State of Illinois
Springfield
62706

May 21, 1970

Ebers, Metskas & Bjorvik
and Associates
Attorneys at Law
120 West Madison Street
Chicago, Illinois 60602

In re: Margaret E. Thompson, appellant, vs. Board of Commissioners of the Oak Brook Park District of DuPage County, Illinois, appellee. No. 43009

Gentlemen:

The Supreme Court today made the following announcement concerning the above entitled cause:

> "The motion by appellee to dismiss this appeal is denied. This is an appeal from an order dismissing a complaint for administrative review on the ground that there was no right to such review from the order of the administrative body. No constitutional question is presented. The alternative motion to transfer this appeal to the Appellate Court, Second District, and for an extension of time of thirty-five days after disposition of motion for filing additional designation of excerpts and brief is allowed."

JT:gn

Very truly yours,
Clerk of the Supreme Court

cc—Mrs. Margaret E. Thompson
P.O. Box 433
Hinsdale, Illinois 60521

APPENDIX C

Opinion of the Circuit Court

Wheaton, Illinois
Telephone MO 8-2300

WILLIAM L. GUILD

Associate Judge of the 18th Judicial Circuit

January 7, 1970

Margaret E. Thompson
3 S 574 Adams Road
Oak Brook, Illinois 60521

Ebers, Metskas & Bjorvik
120 West Madison Street
Chicago, Illinois 60602

Re: Margaret E. Thompson
vs.
Board of Commissioners of the Oak Brook Park District, of Du Page County, Illinois
Case No. 69-1656 G

Dear Madam and Sirs:

This case comes before the court upon the petition of Colin Couper, President of the Oak Brook Park District, defendant, although not made a party defendant by name.

The complaint here seeks administrative review of the annual budget hearing of the Oak Brook Park District, alleging certain alleged irregularities or alleged statutory noncompliance.

Administrative review is unknown to the common law, it is a creature of statute. Usually we must look to the statute to see what review is possible under the provisions

of this act. It is not self-executing, and applies only to cases where it has been adopted by express reference conferring jurisdiction over the administrative agency involved.

Sec. 265 of the Administrative Review Act, 110 Ill. Rev. Stat. 265 states:

> "This Act shall apply to and govern every action to review judicially a final decision of any administrative agency *where the Act creating or conferring power on such agency, by express reference, adopts the provisions of this Act.*"

Examination of the Park District Act, 105 Ill. Rev. Stat., Sec. 1 et seq, fails to disclose any reference to the adoption or the application of the Administrative Review Act to a park district. Therefore, administrative review of the annual budget of the Oak Brook Park district is not possible under the Administrative Review Act.

In view of the above, it is not necessary for me to pass upon the other objection raised by the defendant, but I might add that if the Administrative Review Act were applicable, the failure to make the Oak Brook Park District a party defendant would be fatal and the complaint would be dismissed on that ground.

The motion to dismiss the complaint will be granted.

Very truly yours,
/s/ *William L. Guild*
William L. Guild,
Judge of the Circuit Court

WLG:ep

See: Stirniman vs. County Board of School Trustees
26 App. 2nd 245
Dulancy vs. Schaffer
41 App. 2nd 213

Judgment of Trial Court Dismissing Complaint

IN THE CIRCUIT COURT FOR THE 18th JUDICIAL CIRCUIT OF DU PAGE COUNTY, ILLINOIS

(Filed January 13, 1970)

MARGARET E. THOMPSON, Plaintiff

vs.

BOARD OF COMMISSIONERS OF THE OAK BROOK PARK DISTRICT, OF DU PAGE COUNTY, ILLINOIS, Defendant.

No. 69-1656 G

ORDER

This cause coming on to be heard upon the motion of Ebers, Metskas & Bjorvik and Associates, attorneys for Colin Couper, due notice having been given and the Court having heard the arguments of the plaintiff and the attorneys for Colin Couper, having taken the matter under advisement and being fully advised, It Is Hereby Ordered:

That the motion to dismiss the complaint for administrative review be and is hereby sustained.

The complaint for administrative review is hereby dismissed with prejudice.

ENTER

/s/ *William L. Guild*
Judge
Jan. 13, 1970

Ebers, Metskas & Bjorvik
and Associates
Attorneys for Defendant
120 West Madison Street
Chicago, Illinois 60602
332-1529

Judgment of Trial Court Denying Records

IN THE EIGHTEENTH JUDICIAL CIRCUIT,
DU PAGE COUNTY, WHEATON, ILLINOIS

(Filed January 22, 1970)

MARGARET E. THOMPSON,

vs.

BOARD OF COMMISSIONERS OF THE OAK BROOK PARK DISTRICT, OF DU PAGE COUNTY, ILLINOIS,

---

No. 69-1656 G

O R D E R

This cause coming on to be heard upon the Motion of plaintiff to incorporate certain records into this file, one notice having been given, the Court having heard the arguments of the parties and being fully advised, it is hereby ordered:

That the Motion be and is hereby denied.

/s/ *William L. Guild*
Judge
Jan. 22, 1970

Ebers, Metskas & Bjorvik & Assoc.
Name
Colin Couper
Attorney for
120 W. Madison St.
Address
Chicago
City
332-1529
Telephone

APPENDIX D

Written Protest of Petitioner to Administrative Agency

June 9, 1969

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

TO:

BOARD OF COMMISSIONERS
OAK BROOK PARK DISTRICT
DUPAGE COUNTY, ILLINOIS

Protest In The Matter Of Appropriation Ordinance For The Fiscal Year Beginning April 1, 1969 . *And Ending March* 31, 1970

The undersigned being a legal voter and a tax payer, on the property described in Book 6, parcel number 633 as Ralph B. Thompson Plat of Survey Lot 1 SE¼ Sec. 35 TWP 39 N.R. 11 3.9 acres on the DuPage County Collectors Books, in the above named Park District, hereby protest any action on the part of the corporate authorities of the Oak Brook Park District which would appropriate the sums of money named in the above captioned ordinance for the fiscal year beginning April 1, 1969 and ending March 31, 1970 for the reason that

1. The sums of money are excessive.
2. The action would be prejudicial to my right of protest.
3. The ordinance is of questionable legallity.

Margaret E. Thompson
Adams Road, Oak Brook
Illinois 60521

APPENDIX E

Notice of Final Judgment of Supreme Court of Illinois

State of Illinois
office of

CLERK OF THE SUPREME COURT
Springfield
62706

September 29, 1971

Justin Taft
Clerk

Telephone
Area Code 217
525-2035

Mrs. Margaret E. Thompson
Box 133
Hinsdale, Ill. 60521

No. 44330—Margaret E. Thompson, petitioner, vs. Board of Commissioners of The Oak Brook Park District of DuPage County, Illinois, respondent. Leave to appeal, Appellate Court, Second District.

You are hereby notified that the Supreme Court today denied the petition for leave to appeal in the above entitled cause.

Very truly yours,
Justin Taft
Clerk of the Supreme Court

State of Illinois
office of

CLERK OF THE SUPREME COURT
Springfield
62706

Justin Taft
Clerk

Telephone
Area Code 217
525-2035

May 20, 1971

Mrs. Margaret E. Thompson
P. O. Box 133
Hinsdale, Illinois 60521

Dear Mrs. Thompson:

In Supreme Court today, in case No. 44330 entitled:

Margaret E. Thompson,
petitioner

vs.

Board of Commissioners of
Oak Brook Park District of
DuPage County, Illinois,
respondent

motion by petitioner to strike and dismiss certain parties as respondents in this case, and for other relief was denied.

Very truly yours,
Justin Taft
Clerk of the Supreme Court

APPENDIX F

Opinion of the Supreme Court of Illinois in a Related Case

Docket No. 44488 — Agenda 1 — September, 1971.
THE PEOPLE *ex rel.* RICHARD B. OGILVIE, Petitioner, vs.
JOHN W. LEWIS, Secretary of State, Respondent.

MR. CHIEF JUSTICE UNDERWOOD delivered the opinion of the court:

An act entitled the "Transportation Bond Act," providing for the issuance, sale, and retirement of transportation bonds of the State of Illinois in the amount of $900,000,000, was passed by the 77th General Assembly on June 28, 1971, and approved by the Governor on July 2, 1971. Pursuant to the provisions of that Act, Richard B. Ogilvie, Governor of Illinois, petitioner herein, determined that $100,000,000 of the transportation bonds should be sold at the earliest practicable time and requested John W. Lewis, Secretary of State, respondent herein, to prepare advertisements for bids for the sale of the bonds as provided by the Act. Respondent refused to comply with petitioner's request on the ground that there were serious questions concerning the validity of the Act under the constitutions of the United States and the State of Illinois. In this original action, petitioner seeks a writ of *mandamus* "directing respondent John W. Lewis forthwith to take all necessary action as directed by petitioner" in connection with the issuance and sale of bonds as authorized by the Transportation Bond Act.

Since resolution of the various issues in this case requires analysis of specific provisions of the Act in the context of the Act as a whole, we will set forth in some detail the pertinent provisions in question.

The Act provides for the issuance of $900,000,000 of General Obligation Bonds backed by the full faith and credit of the State of Illinois for two specific purposes enumerated in section 2 of the Act. The first is "the specific purpose of promoting and assuring rapid, efficient, and safe highway, air and mass transportation for the inhabitants of the State by providing monies, including the making of grants and loans, to be used for the acquisition, construction, reconstruction, extension and improvement" of the highway, mass transit and aviation facilities and equipment specified in sections 2(a), 2(b)(1) and 2(c) of the Act "and for the acquisition of real property and interests in real property required or expected to be required in connection therewith."

The other specific purpose is stated as follows in section 2(b)(2) and (3) of the Act: "For the purpose of providing immediate relief from existing or impending inability to meet principal and interest payments and thereby aiding in achieving the maximum benefit for the public from the transportation capital improvement program, to provide funds for any payments required to be made for principal of and interest on bonds, certificates, equipment trust certificates or other evidences of indebtedness issued or guaranteed prior to the passage of this Act by the State or any unit of local government, special transportation district, municipal corporation or other corporation or public authority authorized to provide public transportation within the State or two or more of the foregoing acting jointly, pursuant to any indenture, ordinance, resolution, agreement or contract to obtain and finance transportation facilities"; and to provide funds "for the purpose of reimbursing the General Revenue Fund for monies paid from the General Revenue Fund after passage of this Act" for such purposes. Funds expended for this second purpose are limited to $32,000,000 by section 5.1 of the

Act, which also provides that no bond proceeds shall be subject to appropriation for such purpose by the General Assembly after June 30, 1972.

The bonds authorized by the Act are designated "Transportation Bonds, Series A" and "Transportation Bonds, Series B". The Series A Bonds total $600,000,000, and the proceeds of sale are to be used for "the acquisition, construction, reconstruction, extension and improvement of State highways, arterial highways, freeways, road, structures separating highways and railroads and bridges". (Sec. 2(a).) The proceeds of sale of the Transportation Bonds, Series B, in the aggregate of $300,000,000 are to be used as follows: $200,000,000 for "the acquisition, construction, extension, reconstruction and improvement of mass transportation facilities including rapid transit, rail, bus and other equipment used in connection therewith by the State or any unit of local government, special transportation district, municipal corporation or other corporation or public authority authorized to provide and promote public transportation within the State or two or more of the foregoing acting jointly" (sec. 2(b)(1)), and the remaining $100,000,000 for "the acquisition, construction, extension, reconstruction and improvement of airport or aviation facilities and any equipment used in connection therewith by the State or any unit of local government, special transportation district, municipal corporation or other corporation or public authority authorized to provide public transportation within the State or two or more of the foregoing acting jointly." Sec. 2(c).

The Act goes on to specify that the bonds are to bear interest at a rate not to exceed 7%, shall mature in not more than 30 years from the date of issue, shall be sold only after specified advertisement for bids by the Secretary of State to the highest and best bidder from time

to time as the Governor shall direct for not less than par value with the Governor reserving the right to reject any and all bids, and that the bonds shall be callable as determined by the Governor with the State not to pay a premium of more than 3% of the principal of bonds so called.

The proceeds of sale of the Series A bonds are to be deposited in the State Treasury in a newly created separate fund designated "Transportation Bond, Series A Fund" and the proceeds of the Series B Bonds are to be deposited in a companion fund designated "Transportation Bond, Series B Fund".

Pursuant to section 5 of the Act the proceeds of sale of the bonds are to be used by and under the direction of designated departments of the State of Illinois, "subject to appropriation by the General Assembly, in such amounts and at such times as the respective department deems necessary or desirable" for the purposes of the Act.

Section 7 of the Act sets forth the manner of repayment of the bonds. The Act provides for the creation of two bond retirement funds of the State Treasury, known respectively as "Transportaion Bonds, Series A Retirement and Interest Fund" and "Transportation Bonds, Series B Retirement and Interest Fund". The Governor is directed to include an appropriation in each annual State budget of monies in such amounts as are necessary for the period covered by the budget to pay the principal and interest coming due on the bonds which are outstanding. The Act provides that with respect to the Series A Bonds, "the General Assembly shall annually make appropriations for monies" to pay the principal and interest on the Series A Bonds from the Series A Retirement Fund and "shall

direct the transfer from time to time of monies from the Road Fund" to the Series A Retirement Fund sufficient for this purpose, or if there are insufficient funds in the Road Fund for this purpose, then the General Assembly is directed to transfer such monies as are necessary for that purpose from the General Revenue Fund to the Series A Retirement Fund. With respect to Series B Bonds, the General Assembly "shall make appropriations for monies" to pay the principal and interest on the Series B Bonds and "shall direct the transfer from time to time of monies from the General Revenue Fund" to the Series B Retirement Fund sufficient for this purpose.

Section 7 of the Act further provides that if for any reason the General Assembly should fail to make the appropriations for or transfers to the A and B Retirement Funds of amounts sufficient to pay the principal and interest on the bonds when they become due, "this Act shall constitute an irrevocable and continuing appropriation of all amounts necessary for that purpose, and the irrevocable and continuing authority for and direction to the Auditor of Public Accounts, or Comptroller as his successor, and to the Treasurer of the State to make the necessary transfers out of and disbursements from the revenues and funds of the State for that purpose".

Section 9 contains provisions which require the State Treasurer and Auditor of Public Accounts to make timely transfers of monies as mandated by the provisions of section 7 of the Act with the provision that such transfers are not necessary if the monies in the Series A and B Retirement Funds are sufficient to pay principal and interest due on the outstanding bonds.

The Illinois constitution of 1970 was ratified by the People on December 15, 1970, but did not become generally effective until July 1, 1971. The Transportation

Bond Act was enacted by the 77th General Assembly during this interim period. The anticipatory nature of the Act is apparent. The preamble to the Act states that it is "An Act in anticipation of the effective date of the Illinois Constitution of 1970 and to implement, in part, Article XIII, Section 7 of the Constitution * * * ." Section 12 of the Act provides: "This Act having been passed in anticipation of the effective date of the Illinois Constitution of 1970 and to implement, in fact, Article XIII, Section 7 of the Illinois Constitution of 1970, shall go into full force and effect upon July 1, 1971 or upon the date when the Governor signs this Act into law if such signing occurs after July 1, 1971."

On July 2, 1971, the Act was approved by the Governor and thereupon became law one day after the Illinois Constitution of 1970 became generally effective.

Respondent's initial contention is that the validity of the Transportation Bond Act must be determined by the constitution of 1870 in effect at the time the Act was passed by the General Assembly and not by the constitution of 1970 in effect at the time the Act became law. The underlying issue is whether the legislature has power to enact legislation to anticipate and be tested by an already ratified but not yet effective constitution even though the legislation possibly may not have been valid if tested by the constitution in effect at the time of its passage. This is a question of first impression in Illinois for the practical reason that the 1848 and 1870 constitutions became effective very shortly after ratification by the People. However, the United States Supreme Court has upheld legislation in anticipation of a constitutional amendment (*Druggan* v. *Anderson* (1926), 269 U.S. 36, 70 L.Ed. 151, 46 S.Ct. 14, as have most State courts which have considered the question. (*Gaylord* v. *Beckett* (1966), 378 Mich.

273, 144 N.W.2d 460; *In re Opinions of the Justices* (1933), 227 Ala. 291, 149 So. 776; *Alabama's Freight Co.* v. *Hunt* (1926), 29 Ariz. 419, 242 Pac. 658; *State* v. *Herker* (1923), 109 Ore. 520, 221 Pac. 808; *Neisel* v. *Moran* (1920), 80 Fla. 98, 85 So. 346). The authority to the contrary involves distinguishable circumstances where there was pre-ratification anticipatory legislation; *i.e.*, legislation passed in anticipation of the ratification of a particular constitutional provision. *In re Opinion of the Justices* (1941), 137 Me. 350, 19 A.2d 53; *In re Opinion of the Justices* (1934), 132 Me. 519, 174 A. 845; *Etchison Drilling Co.* v. *Flournoy* (1912) 131 La. 442, 59 So. 867.

We read the case above-referred to as standing for the general proposition that the enactment of legislation in anticipation of an adopted but not yet effective constitutional provision is within the plenary lawmaking power of the legislature unless anticipatory legislation, as such, is prohibited by constitutional provisions. Applying that general principle to the case before us, we think it is clear that anticipatory legislation such as the Transportation Bond Act is not contrary to the letter or spirit of either the 1870 or 1970 constitutions. Indeed, it could reasonably be concluded that the framers of the 1970 constitution intended to afford the 77th General Assembly an opportunity to enact anticipatory and implementing legislation by providing a six and one-half month period between the date of ratification of the new constitution and its effective date. Practical considerations also indicate the desirability of anticipatory and implementing legislation in advance of the effective date of a new constitution. Such legislation is necessary in some cases to supplement new constitutional provisions which are not self-executing and in other cases to insure an orderly and efficient transition from the old to the new constitution and a continuity in the operation of government.

With respect to the Act here in question the legislature apparently determined that there was a present need for aid and assistance to public transportation in the State. Accordingly, the General Assembly enacted the Transportation Bond Act to anticipate a particular enabling provision of the 1970 constitution which was certain to become effective on July 1, 1971. There is no justification in law or reason to require the General Assembly to wait until its next session to pass this legislation. The possibility that the Act may not have been valid under the 1870 constitution is of no consequence, since the Act never became effective, and indeed never became a law, under that constitution. We conclude that the legislature had power to enact the Transportation Bond Act in anticipation of the effectiveness of the 1970 constitution and that the validity of the Act must be determined thereunder.

Respondent next contends that the Transportation Bond Act does not set forth the "specific purposes" of the law as required by section 9(b) of the constitution which provides that "any law providing for the incurring or guaranteeing of debts shall set forth the specific purposes * * * ."

We believe that the "specific purposes" requirement of article IX, section 9(b), was intended to require that laws such as the Transportation Bond Act which incur debt through the issuance of bonds must define in reasonable detail how the funds from the sale of bonds are to be expended and the objectives to be accomplished. As we have indicated above, the Transportation Bond Act states that it has two specific purposes. The first is "promoting and insuring rapid, efficient and safe highway, air and mass transportation for the inhabitants of the State" by providing funds, grants and loans to be used for the "acquisition, construction, reconstruction, extension and improvement" of highway transportation, mass transpor-

tation and aviation facilities and for the acquisition of real property and interests in real property which are required in connection therewith. Sub-section 2(a) defines how the funds are to be expended for highway transportation purposes; sub-section 2(b) describes how the funds are to be expended for mass transportation purposes; and sub-section 2(c) specifies how the funds are to be spent for aviation purposes.

With respect to this portion of the Act, it is our opinion that the Act sets forth with reasonable detail how the funds are to be expended and the objectives to be accomplished. A project by project itemization certainly could not be expected in a comprehensive act of this type. (*Mitchell* v. *Lowden* (1919), 288 Ill. 327; *Lund* v. *Horner* (1941), 375 Ill. 303.) We believe that sufficient guidelines are established which will permit the respective governmental departments to plan future use of the funds for particular projects and to afford the legislature adequate standards to determine whether funds should be appropriated for such intended uses.

The principal thrust of respondent's argument that the Act does not meet the "specific purposes" requirement of the constitution relates to the second purpose set forth in section 2(b)(2) and (3) concerning debt relief for certain entities. Closely related to this contention is his assertion that this portion of the Act is invalid because it appropriates public funds for nonpublic purposes in contravention of article VIII, section 1(a), of the constitution which provides that "public funds, property or credit shall be used only for public purposes." In particular he contends that section 2(b)(2) does not specify the nature of the pre-existing indebtedness to be retired by the proceeds of the sale of Transportation Bonds with the result that monies may be allocated under the Act to abroad

number of entities for payment of indebtednesses which may have been incurred for purposes unrelated to public transportation, thus constituting a diversion of public monies for nonpublic purposes.

In construing the Transportation Bond Act as a whole and section 2(b)(2) thereof in particular, it must be kept in mind that the Act was enacted to implement section 7 of article XIII of the constitution which provides:

> "public transportation is an essential public purpose for which public funds may be expended. The General Assembly by law may provide for, aid, and assist public transportation, including the granting of public funds or credit to any corporation or public authority authorized to provide public transportation within the State."

In our opinion section 2(b)(2) contains significant limitations in addition to those imposed by section 5.1 limiting expenditures for these purposes to $32,000,000 and providing that no bond proceeds may be appropriated for debt relief subsequent to July 30, 1972. The debt relief may be provided only in cases of "existing or impending inability to meet principal and interest payments" and only for the purpose of "achieving the maximum benefit from the transportation capital improvement program"; the debt must have been incurred only by entities "authorized to provide public transportation within the State"; and the purpose of the debt must have been "to obtain and finance transportation facilities." The term "transportation facilities", in section 2(b)(2), when read in the context of the Act, must refer to those facilities which were acquired for public transportation purposes. In view of the stated purposes of the Act and the constitutional provision which it was intended to implement and

anticipate, we believe that this section clearly contemplates the expenditure of funds for debt relief only where that debt was incurred for the constitutionally permissible purpose of aiding and assisting public transportation. We again emphasize the further significant safeguard applicable to all expenditures of bond proceeds under the Act: namely, that no funds may be expended unless first appropriated by the General Assembly, thus affording the legislature an opportunity to scrutinize all proposed expenditures to insure that they will be made only for the public transportation purposes contemplated by the Act.

We conclude, therefore, that section 2(b)(2) sets forth with sufficient definiteness the "specific purposes" as required by section 9(b) of article IX of the constitution and does not authorize an expenditure of public funds for non-public purposes in contravention of section 1(a) of article VIII of the constitution.

Respondent further contends that the Transportation Bond Act is not confined to one subject, and therefore violates section 8(d) of article IV which provides in pertinent part that "bills, except bills for appropriations and for the codification, revision or rearrangement of laws, shall be confined to one subject." This provision is basically identical to that portion of section 13 of article IV of the 1870 constitution which provided: "No act hereafter passed shall embrace more than one subject * * *." *In People ex rel. Gutknecht* v. *Chicago* (1953), 414 Ill. 600, we stated, "The requirement of singleness of subject has been frequently construed, and the applicable principles are settled. The term 'subject' is comprehensive in its scope and may be as broad as the legislature chooses, so long as the matters included have a natural or logical connection. An act may include all matters germane to a general subject, including the means reasonably necessary or appropriate to

the accomplishment of legislative purpose. Nor is the constitutional provision a limitation on the comprehensiveness of the subject; rather, it prohibits the inclusion of 'discordant provisions that by no fair intendment can be considered as having any legitimate relation to each other.' (*People ex rel. City of Chicago* v. *Board of County Comrs. of Cook County*, 355 Ill. 244)." 414 Ill. at 607-08.

The single subject matter of the Transportation Bond Act is the aiding and assisting of public transportation in the State of Illinois by the issuance and sale of transportation bonds. In our opinion, all provisions of the Act are germane to this single subject, and we find no violation of the "single subject" requirement of section 8(d) of article IV of the constitution.

Respondent next contends that the Transportation Bond Act does not meet the requirement of section 9(b) of article IX of the constitution which provides in part that "any law providing for the incurring or guaranteeing of debt shall set forth * * * the manner of repayment." In particular he argues that the Act does not adequately describe the specific means of raising the State revenues necessary to repay the bonds. Examination of section 7, 8, 9 and 10 of the Act reveals various and detailed provisions relating to the repayment process and the various funds within the State Treasury from which the monies are to come. The transportation bonds are general obligations of the State of Illinois with the general revenues of the State ultimately pledged to insure their payment. We do not concur with respondent's suggestion that the constitutional provision in question requires that the Act must prescribe how State revenues are to be raised to repay the bonds in the future. As we view the Act, this requirement is concerned with such repayment essential as the interest rates, maturity dates, call options, and similar matters.

In our opinion the Act sufficiently prescribes the "manner of repayment" within the intent of section 9(b) of article IX.

Respondent next directs our attention to the second paragraph of section 7 of the Act which provides that if the General Assembly should fail to make appropriations for payment of the bonds as required by the Act, then "this Act shall constitute an irrevocable and continuing appropriation of all amounts necessary for that purpose * * *". Respondent argues: (1) That this provision violates that portion of sectaion 8(d) of article IV of the constitution which provides that "appropriation bills shall be limited to the subject of appropriations"; and (2) that it constitutes a "continuing appropriation" in violation of section 2(b) or article VIII which provides in part that "appropriations for a fiscal year shall not exceed funds estimated by the General Assembly to be available during that year."

With respect to respondent's first contention, we think it clear that the statutory provision in question is an integral part of the "manner of repayment" provisions of the Act which are required by section 9(b) of article IX of the constitution. To the extent that there is any conflict in this case between this specific constitutional provision and the more general provision of section 8(d) of article IV concerning appropriation bills, we believe that the more specific provision of section 9(b) of article IX should take precedence. As this court stated in *People ex rel. Nauert* v. *Smith*, 327 Ill. 11 (1927), "When general and special provisions of a constitution are in conflict the special provisions should be given effect to the extent of their scope, leaving the general provisions to control in cases where the special provisions do not apply. The particular intent incompatible with a general intent will be treated as an exception." (327 Ill. at 20; see also *Rehnke* v. *New Jersey*

Highway Authority (1953), 13 N.J. 14, 97 A.2d 647.) Accordingly, we conclude that the "continuing appropriations" provision in the second paragraph of section 7 of the Act does not violate section 8(d) of article IV of the constitution as contended by respondent.

Unlike the 1870 constitution which specifically prohibited appropriations beyond a specified period (*Bowes* v. *Howlett* (1962), 24 Ill.2d 545; *People ex rel. Millner* v. *Russell* (1924), 311 Ill. 96), the 1970 constitution contains no express provision limiting the length of time for which legislative appropriations may be made. Respondent contends, however, that continuing appropriations are implicitly prohibited by section 2(b) of article VIII of the new constitution which provides that appropriations for a fiscal year must not exceed the funds estimated by the General Assembly to be available during that year to satisfy the appropriations. He suggests that a continuing appropriation is inconsistent with this provision in that the legislature cannot possibly estimate the "funds available" for future years to which the appropriation relates.

Section 2(a) of article VIII of the constitution provides, among other things, that the Governor shall prepare and submit to the General Assembly a balanced State budget for each fiscal year; *i.e.*, a budget with proposed expenditures not exceeding estimated available funds. Section 2(b) of article VIII, relied on by respondent, complements these balanced budget provisions by providing that the legislature must limit its annual appropriations each fiscal year so as not to "exceed funds estimated by the General Assembly to be available during that year." We do not read these provisions as prohibiting appropriations which continue beyond one fiscal year.

The Transportation Bonds issued under the Transportation Bond Act are general obligations of the State of Illi-

nois, and provision must obviously be made for their payment out of State funds. Consistent with the budgetary requirements section (2a) of article VIII of the constitution, section 7 of the Act directs the Governor to make provision in each annual State budget for payment of principal and interest coming due on the outstanding bonds. The General Assembly, in turn, is directed by that section to appropriate funds each fiscal year to pay these amounts. Only if the General Assembly should, for some reason, fail to make such appropriations for any given fiscal year does the continuing appropriation provision in question become operative to do what the General Assembly was supposed to do. We think it is clear that the requirements of section 2(b) of article VIII would be complied with so long as the total appropriations for any fiscal year, including the amounts appropriated to pay principal and interest on outstanding Transportation Bonds, do not exceed the estimated available funds. We conclude, therefore, that the continuing appropriation provision in the second paragraph of section 7 of the Act is not inconsistent with or prohibited by section 2(b) of article VIII of the constitution.

Respondent also argues that the Act is invalid in that it is vague, indefinite and uncertain and that it provides for an unconstitutional delegation of legislative authority to the Governor by providing that he is to determine various details with respect to sale of the bonds. We have considered respondent's contentions in this regard and find them to be without merit.

We concur with petitioner's suggestion that *mandamus* is an appropriate remedy under the facts presented to us, and we therefore direct that a writ of *mandamus* issue to respondent directing him to comply with the provisions of the Transportation Bond Act, and perform the duties therein specified to be performed by him.

Writ awarded.

APPENDIX G

STATE OF ILLINOIS
OFFICE OF
CLERK OF THE SUPREME COURT

Springfield 62706

Justin Taft
Clerk

Telephone
Area Code 217
525-2035

October 13, 1971

Mrs. Margaret E. Thompson
Box 133
Hinsdale, Illinois 60521

In re: Margaret E. Thompson, petitioner, vs. Board of Commissioners of the Oak Brook Park District of DuPage County, Illinois, respondent No. 44330

Dear Mrs. Thompson:

We have today received and filed your motion, notice and order entered by Justice Charles H. Davis staying the mandate for a period of sixty days in the above cause.

Very truly yours,

Justin Taft
Clerk of the Supreme Court

JT:jae
cc:Ebers, Metskas & Bjorvik

APPENDIX H

STATE OF ILLINOIS
OFFICE OF

CLERK OF THE SUPREME COURT
SPRINGFIELD
62706

JUSTIN TAFT
Clerk

November 24, 1971

Telephone
Area Code 217
525-2035

Ms. Margaret E. Thompson
Box 133
Hinsdale, Illinois 60521

In re: Margaret E. Thompson, petitioner, vs. Board of Commissioners of the Oak Brook Park District of DuPage County, Illinois, respondent. No. 44330

Dear Ms. Thompson:

The Supreme Court today made the following announcement concerning the above entitled cause:

"The portion of the motion by petitioner for reconsideration of the order staying mandate for sixty days is allowed. The mandate is stayed for an additional sixty days. It is unnecessary to consider the part of the motion to direct the Clerk of the Appellate Court to transfer the records to this Court, and that the Clerk of the Supreme Court prepare, index and certify the records for transmission to the United States Supreme Court."

Very truly yours,
Justin Taft
Clerk of the Supreme Court

JT:mf
cc: Ebers, Metskas & Bjorvik

APPENDIX I.

THE TRIAL COURT RULINGS, p. 7, Report of Proceedings:

"Mr. Bjorvik: .... Now the agency here involved is the park district, not the Board of Commissioners.

The Court: That is right, no question about it."

And on Page 9, same report:

"The Court: I do think you should have filed this on behalf of Colin Couper as a commissioner and not individually. He was not served individually.

Mr. Bjorvik: He was served—

Mrs. Thompson: As President.

The Court: If you serve the president of a corporation you are serving the corporation so he was sued as commissioner and not individually.

Mr. Bjorvik: The complaint does not include Mr. Couper's name.

The Court: It certainly does not, I think you are probably in error on that, but be that as it may, I really don't understand how you sue a park district without making them party defendant.

Mrs. Thompson: I'll amend it and make them party defendant. I did not think I was making two separate things.

The Court: No you aren't. If you want to sue the County of Du Page you don't make the Board of Supervisors the party. You are seeking relief against the Park District.

Mrs. Thompson: The voting part.

The Court: What is the difference?

Mrs. Thompson: I am a member of the park district.

The Court: No you are not a member of the board (district)."

Continued Rulings of Trial Court page 11, report:

Mrs. Thompson: He can't make the motion. Colin Couper can't make a motion to dismiss.

The Court: Yes he can. If he has been served as a defendant he can.

Mrs. Thompson: He was served as President of the park Board and he has to make his motion to dismiss as president of the park Board.

The Court: She is right on that.

Mr. Bjorvik: He is here before the court. I am representing him.

Mrs. Thompson: Show me the minutes of the Park Commissioners that says they gave him a right—."

The Court also ruled:

"The Court: . . . and it is your contention you can't have administrative review of a budget ordinance of a municipality?

Mr. Bjorvik: Absolutely, your honor.

The Court: Unfortunately, I think you are right.

Mrs. Thompson: Will you let me testify?

The Court: What do you want to say?

Mrs. Thompson: I want to say that this is against the Board of Park Commissioners not against Mr. Couper."

And on Page 8, same report:

"The Court: I think you have the wrong party.

Mrs. Thompson: I don't think I have. You look down at Section 264 and you will find that it says 'unless the validity is in question'—that's in 264-110, at the end of it, it reads 'unless such a rule or policy is involved in a proceeding before the agency and it's applicability is in issue in such proceeding.' In exhibit 'D' where I appeared before this Board of Com-

missioners I did question the legality. They are appropriating eighteen times as much as they spent the year before and I did allege they are going to condemn land. And when you question the validity of it, it does come under administrative review. Not only that, I think it's about the only way you can do it according to People v. White. (People ex rel. Goldfarb v. White, 54 Ill. App. 2nd, 483.) Besides, because I did not join the Oak Brook Park District is not a reason for dismissing a suit. You can amend it. Besides that he has not filed anything in this case.

The Court: He has it right here.

Mr. Bjorvik: We have an appearance on file for Mr. Couper."

January 22, 1970, trial court record, Report of Proceedings:

"Mrs. Thompson: . . . . I want to appeal this decision of yours because I don't agree with you.

The Court: Okay.

Mrs. Thompson: I think it says if administrative review act is pinned on someone that that is the only thing you can use. It does not say you can only use it where it is adopted. Next thing, that I did not join the Oak Brook Park District. I would like to say—

The Court: I have ruled on that.

Mrs. Thompson: I know. But I would like to say also there are references on that to the contrary.

The Court: Okay.

Mrs. Thompson: Now I am not very happy when you make a decision when I asked the first time for them to identify themselves. I think that when I asked for the record to prove who they were and you make

a decision without it it sort of puts me in a bad position. I would like to know who Colin Couper is. You say he is President of the park district but he does not say that. . . . ."

(the motion was not in the file)

On page 22, same report:

"Mrs. Thompson: I have a copy of the Motion but I don't know that I ever saw it in the file. He doesn't say that he is president of the Park District any place.

The Court: Somebody told me that. I would not know that.

Somebody told me.

Mrs. Thompson: All right there is no place in the file says he is president of the park district.

The Court: All right then he isn't president of the park district.

Mrs. Thompson: Okay then on what basis is he in here?

Mr. Metskas: (this man did not identify himself to the court, and was completely unknown to me. The Court Reporter came up with this name after this transcript was approved by Judge Guild as shown by the record on appeal) Your Honor, this motion—

Mrs. Thompson: Now I am on the floor and I intend to keep the floor.

The Court: Fine. What do you want this morning Mrs. Thompson?

Mrs. Thompson: I want to know first who is Colin Couper that they can sue me for expenses and I have a right to know who Colin Couper is. He came in here 33 days late and if he was a Democrat you would cut him off in 21 seconds—

The Court: Oh now just a minute, Mrs. Thompson. That's all I am not going to listen to your talking to me that way. I don't have to. I am going to hold you in contempt of court if you do that.

(Judge Guild knew what I was talking about. About thirty three Democratic Precinct Committeemen had been denied the filing of their nominating petitions because they were 21 seconds late, three of the four court house doors had been locked and the County Clerk was claiming that his clock was five minutes slow. The case was in the trial court at the same time. At the same time Judge Guild was seeking nomination for a higher court judgeship on the Republican ticket. He was elected to the Appellate Court and was one of the four judges sitting in that court when this case was decided there, although his name does not show)

. . . .

"Mrs. Thompson: My Motion is I would like the records.

The Court: You may have the records."

Page 31, trial court record, report of proceedings:

"Mrs. Thompson: On what basis did you dismiss it?

The Court: Mam, I wrote you a letter and told you that.

Mrs. Thompson: I don't care if you dismiss it on the motion of Colin Couper, President of the Oak Brook Park District but I do object to your throwing it out on the motion of Colin Couper. The President is not a natural entity and Colin Couper is.

The Court: I have dismissed it so you have the right to appeal Mrs. Thompson."

In the Appellant's Brief appear these words, on Page 2:

"I. The issue is the validity and constitutionality of Sec. 265, Chapt., 110, Ill. Rev. Stat. 1967 and whether the trial court ruled correctly on the application of the Administrative Review Act to decisions of the Defendant, Board of Commissioners."

And on Page 3 of the same Brief:

"It is Plaintiff's theory that the title, Scope of Act, Sec. 265, Chap. 110, Ill. Rev. Stat. belies what is actually being said in the first paragraph rendering that portion of said section invalid and unconstitutional because it is being used to deny Plaintiff a vested right, the right to appeal the administrative decisions of the Defendant, Board of Commissioners, under the administrative review (act)."

And on Page 9, of the same Brief:

"The confusion that exists seems to stem from the title of the section in question," (Scope of Act), "which reflects that administrative review is limited, whereas the first paragraph of Sec. 265 of Administrative Review only defines where administrative review (act) is required of those seeking judicial review. It is the opinion of the Plaintiff that the title of Section 265, (Scope of Act), is not embraced in the act, contrary to Art. IV, Sec. 13 Ill. Const. and administrative review, the people(s) right to peaceably petition for redress of grievance against the government, has been relegated to the moth balls."

APPENDIX J

EBERS, METSKAS & BJORVIK

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September 10, 1969

Mr. and Mrs. Ralph B. Thompson
Adams Road
Oak Brook, Illinois 60521

Re: Oak Brook Park District

Dear Mr. and Mrs. Thompson:

Please be advised that the following action was taken at the regular meeting of the Board of Commissioners of Oak Brook Park District, Du Page County, Illinois, at the meeting held September 8, 1969.

> "Attorney Bjorvik advised that he had reviewed the Petition presented by Ralph B. Thompson and Margaret E. Thompson to disconnect certain property from the Oak Brook Park District and that the Petition was in proper form: An Ordinance Disconnecting Certain Territory From The Oak Brook Park District, Du Page County, Illinois, was presented to the Board of Commissioners for consideration. After thorough discussion, it was moved by Commissioner Trier that the Petition be denied, which motion was seconded by Commissioner Heretik and passed unanimously."

Yours very truly,

EBERS, METSKAS & BJORVIK
AND ASSOCIATES

Roger A. Bjorvik
Roger A. Bjorvik

RAB:lt